

1715481 (Migration) [2020] AATA 965 (2 April 2020)

DECISION RECORD

DIVISION:	Migration & Refugee Division
CASE NUMBER:	1715481
MEMBER:	Margie Bourke
DATE:	2 April 2020
PLACE OF DECISION:	Melbourne
DECISION:	The Tribunal remits the application for a Partner (Residence) (Class BS) visa for reconsideration, with the direction that the applicant meets the following criteria for a Subclass 801 (Partner) visa: • cl.801.221(2)(c) of Schedule 2 to the Regulations.

Statement made on 02 April 2020 at 8:34am

CATCHWORDS

MIGRATION – Partner (Residence) (Class BS) visa – Subclass 801 (Partner) – credibility concerns – history of false and misleading information – number of previous sponsorships – Centrelink records – undisclosed income – evidence in relation to household pets and work schedule – genuine spousal relationship – financial aspects – nature of household – social aspects – parties’ commitment to each other – credibility of written and/or oral evidences of witnesses – decision under review remitted

1.

LEGISLATION

Migration Act 1958 (Cth), ss 5F, 65

Migration Regulations 1994 (Cth), rr 1.15A, 1.20J; Schedule 2, cl 801.221; Schedule 4, PIC 4020

CASES

He v MIBP [2017] FCAFC 206

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 378 of the Migration Act 1958 and replaced with generic information.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

2. This is an application for review of a decision made by a delegate of the Minister for Immigration on 4 July 2017 to refuse to grant the applicant a Partner (Residence) (Class BS) visa under s.65 of the *Migration Act 1958* (the Act).
3. The applicant applied for the visa on 10 May 2013 on the basis of his relationship with his sponsor. At that time, Class BS contained only one subclass: Subclass 801 (Partner). The criteria for the grant of this visa are set out in Part 801 of Schedule 2 to the Migration Regulations 1994 (the Regulations). The primary criteria must be satisfied by at least one applicant.
4. The delegate refused to grant the visa on the basis that the applicant did not satisfy cl.801.221 because the delegate was not satisfied that the applicant is the de facto partner or the spouse of the sponsor as defined in s.5CB or s.5F of the Act.
5. The applicant appeared before the Tribunal on 16 December 2019 to give evidence and present arguments. The Tribunal also received oral evidence from the sponsor and two of the sponsor's children.
6. The applicant was represented in relation to the review by his registered migration agent. The representative attended the Tribunal hearing.
7. For the following reasons, the Tribunal has concluded that the matter should be remitted to the Department for reconsideration.

CONSIDERATION OF CLAIMS AND EVIDENCE

8. The issue in the present case is whether the applicant is the de facto partner of the sponsor at the time of application and the spouse of the sponsor at the time of decision.
9. There are no certificates issued on the Department file.
10. Information provided in relation to previous sponsorships and the sponsor's centrelink benefits
11. There are some unusual background circumstances that are relevant to the review. The date the application for the visa was lodged is recorded by the Department as 10 May 2013. There are several documents on the Department file dated May 2013. The application form on the Department file is dated 5 September 2014. The sponsorship form on the Department file is dated 5 September 2014. Both forms record the date of the marriage of the parties which is 22 March 2014, so I conclude both these forms must have been completed and lodged after 22 March 2014. The applicant stated in the hearing that initially he and the sponsor completed and submitted the incorrect forms, and stated that he completed and signed the sponsorship form and the sponsor completed and signed the applicant's form. The applicant stated he recollected the Department asked them to complete the correct forms, and they did so a few days later.
12. The Department advised the Tribunal that it had a record that the applicant and sponsor had provided the incorrectly completed forms but had not retained a copy of the incorrect forms. The Department advised the Tribunal that there is no record of what happened to the original application forms. There was no information provided as to whether there was any

application and sponsorship form provided between 10 May 2013 and 5 September 2014. The applicant was granted the subclass 820 visa on 23 September 2014.

13. At the time of the application for the visa the sponsor had been in three previous relationships known to the tribunal, and had sponsored two previous persons in relation to applications for partner visas. These facts in relation to the sponsor's previous relationships and previous sponsorships are accepted by the applicant in the submissions, evidence and forms provided by the applicant to the tribunal.
14. This information is recorded in the Department's decision record dated 4 July 2017, a copy of which was provided to the tribunal by the applicant. The sponsor was married to [Mr A], and had three children. The sponsor made a sponsorship application for a de facto partner, [Mr B] in 2007. The sponsor made a sponsorship application for her spouse [Mr C] in 2008.
15. The applicant and sponsor declared her sponsorship of, and marriage to, [Mr C], in 2008, in the application and sponsorship forms dated 5 September 2014 provided to the Department. The sponsor declared in the forms that she had sponsored one other de facto partner, spouse or prospective spouse before the applicant, and named this other sponsored partner as a spouse [Mr C]. The sponsor used the family name [Family Name 1] in the sponsorship of the applicant. The sponsor and the applicant did not declare the sponsor had had any previous de facto relationships.
16. At the time the applicant was granted the subclass 820 visa, the sponsorship limitations of r.1.20J would have applied, and the provisions of PIC 4020(1) and (5) would have applied in relation to providing false and misleading information to a relevant criterion. The sponsorship limitations do not apply to the permanent visa subclass 801, and therefore PIC 4020 criteria does not engage in this review of the Department decision to refuse the Subclass 801 visa as there is no false or misleading information provided in relation to a relevant criterion.
17. The issue that the sponsorship limitations of r.1.20J and the provisions of PIC 4020 applied to the assessment of the criteria of the application for the subclass 820 visa is real. The correct information about the number of previous partner sponsorships that the sponsor had made was not provided, and this correct information that was not provided was relevant to a criterion for the subclass 820 visa. I am aware, as the delegate was rightly aware, that the decision maker in this matter has to be alert to the issue of the credibility of the applicant and the sponsor.
18. It is relevant to any consideration of credibility of the applicant and sponsor that the only application and sponsorship forms provided to the Tribunal by the Department are dated 5 September 2014. The Department file recorded that the applicant was requested by the Department to provide submissions in relation to compelling reasons for the purposes of assessment of meeting Schedule 3 criteria. The applicant provided a submission and attached documents which included a medical report dated [September] 2014 that recorded the sponsor underwent surgery [in] September 2014 which would involve a six-week recuperation process. The medical report does not specify that the sponsor was unwell prior to the operation, but did specify that the sponsor required blood transfusions. I accept the sponsor had a significant surgical procedural and a six week recovery period following the procedure [in] September 2014, based on the medical reports provided to the Department.
19. The applicant has not disputed that incorrect information was provided by the sponsor and himself in the application and sponsorship forms in relation to the number of previous sponsorships that the sponsor had made. The applicant has maintained that the incorrect information was provided unintentionally. I have considered that the question asked of the sponsor was a specific question: *have you previously sponsored a spouse, de facto partner, prospective spouse (fiancé) or independent partner? No Yes How many times? The*

applicant ticked yes and recorded she had previously sponsored "1" partner and then gave the details. It is difficult to accept that the specific answer of one previous sponsorship was made unintentionally or by mistake. The sponsorship form then provides space for the details of at least two previous sponsorships.

20. I have considered that this form is dated 5 September 2014, five days before the sponsor's operation. I have considered that the sponsor gave precise information in response to the questions asked, and omitted to provide any details of her other sponsorship. There is no medical evidence before me that the sponsor was medically unfit to answer questions or provide correct information on 5 September 2014. I accept the sponsor had surgery scheduled in five days' time on 5 September 2014 when the forms were completed.
21. The applicant provided the Department with a form 1023 completed by the sponsor dated 17 February 2017 in which she declares that she had provided incorrect information of the details about *previous partner visa sponsorships and previous relationships*. The sponsor states that the correct details about her previous partners are (1) [Mr A] and (2) [Mr C]. The applicant does not clarify the incorrect information about the sponsor's previous partner visa sponsorships in this form 1023. The correct information about the sponsor's previous partner sponsorships is not provided.
22. I am satisfied that the applicant and sponsor provided incorrect information to the Department in their application and sponsorship forms dated 5 September 2014. I am satisfied that the applicant acknowledges the incorrect information was provided to the Department in the Form 1023 dated 17 February 2017. In the tribunal's assessment of the information before it, the lack of information in the form 1023 about the previous incorrect information about the sponsor's previous partner sponsorships indicates a willingness to continue to mislead the Department and not to provide the correct information relevant to the application.
23. In the Department decision record, the delegate records that Centrelink records show the sponsor's marital status is listed as 'divorced' from 2003 til the time of decision (July 2017), and the sponsor was in receipt of newstart from 2013 to 2017. The sponsor provided a statutory declaration dated 17 February 2017 to the Department in which she declared "I know I have made mistake by not disclosing to Centrelink and to immigration that I have newstart allowance". In the statutory declaration dated 17 February 2017 the sponsor states she will return the money to Centrelink that she "was not entitled to". The sponsor provides an explanation that the money was need for school fees, shopping, bills and debts. The sponsor declared the applicant tried to help her but he also needed his income to send to his mother in India, and for his debts.
24. The sponsor provided a second statutory declaration dated 17 February 2017 in which he declares "I [the sponsor] made my mistakes, and I do hope you can give me another chance as I can prove to you that I will do the right thing."
25. The information provided by the applicant to the Department includes information that that the sponsor and the applicant have provided incorrect information to the immigration authorities and the sponsor had provided incorrect information to Centrelink.
26. It is of concern that both the applicant and sponsor have stated that incorrect information has been provided to government authorities. It is of concern to the tribunal that the incorrect information has been provided to government authorities by the applicant and sponsor to meet their own purposes. I find, based on the evidence that the applicant has previously provided incorrect evidence to a government authority (the Dept) for his own benefit, to be granted the Subclass 820 visa. I find, based on the evidence before me, that the sponsor

has previously provided incorrect evidence to a government authority (Centrelink) for her own benefit, to receive government benefits to which she was not entitled.

27. Information provided by the applicant in support of the application

28. The applicant provided extensive documents in support of his application for the visa, to both the Department and the tribunal. As stated above the application and the sponsorship forms on the Department file are dated 5 September 2014 although the application was lodged in May the previous year. The applicant also provided the Department with documents including a copy of his translated birth certificate, the parties' marriage certificate dated [in] March 2014, a two-page handwritten statutory declaration dated 7 May 2013 from the applicant, a two-page handwritten statutory declaration from the sponsor dated 7 May 2013, a statutory declaration from the sponsor's son dated 7 May 2013, a statutory declaration from a friend of the sponsor dated 8 May 2013, a form 80 completed by the applicant dated 9 May 2013 and a second form 80 completed by the applicant dated 9 April 2014, financial documents including bank statements from the applicant's bank account and a joint bank statement from both parties, a typed statement from the sponsor stating they were living in financial hardship, medical reports in relation to the sponsor and her admission to hospital on 10 September 2014, photographs, and two handwritten statutory declarations dated 15 September 2014 from two of the sponsor's children.
29. The applicant also provided the Department with a statutory declaration signed by him on 3 May 2015 about his relationship with the sponsor and a similar statutory declaration completed by the sponsor dated 5 May 2015. The applicant provided two statutory declarations from the sponsors daughter [Ms D] both dated 29 April 2015, and two statutory declaration from her other daughter [Ms E] also dated 29 April 2015, bank statements, a joint utility gas bill, a jewellery receipt, a motor vehicle insurance document, telephone records and bills. The applicant provided the Department with a change of passport details in 2016, and further photos, medical reports in relation to the sponsor, two statutory declarations from the sponsor dated 17 February 2017, a statutory declaration from the sponsor's daughter [Ms E] dated 17 February 2017, form 1023 notification of incorrect answer from the sponsor dated 17 February 2017, bank statements in the name of the applicant, records of overseas transfers, bank statements in the name of the sponsor, and medical records and death certificate in relation to [Mr F in] June 2015.
30. The applicant provided a submission to the tribunal dated 9 December 2019, and also provided a statement from the applicant and sponsor, further photos of the applicant and sponsor, their wedding, and their pets, statements from the sponsor's son [Mr G] and the sponsor's daughter [Ms E], the applicant's sister and two from friends. The applicant also provided further bank statements in the name of the applicant and the sponsor, evidence of travel together to [Country 1], receipts with payment plans, other financial documents of car insurance and copies of personal cards.
31. The tribunal has considered all the information provided to both the Department and the tribunal as well as the evidence the parties and witnesses gave at the hearing.

32. Information provided by the witnesses at the hearing

33. At the hearing the tribunal heard evidence from the applicant, the sponsor, the sponsor's daughter [Ms E] and the sponsor's son [Mr G]. The four witnesses gave evidence that the applicant lived with the sponsor, that they all resided at the same property which is owned by the sponsor's sister, and that the applicant and sponsor are in a genuine relationship.
34. [Ms E] and [Mr G] stated they had both always lived with their mother, and they had lived at their current address since primary school. I accept that [Ms E] and [Mr G] are adults in their

[specified age range] at the time of giving evidence. Both [Ms E] and [Mr G] stated they had completed Year 12 and are now in full time employment. They stated they do not pay any board, but they pay for the internet costs in the house. [Ms E] stated that she was aware the applicant and her mother had financial issues but she does not know what they were, and did not involve herself. [Ms E] stated she became aware in the hearing today that there were some issues in the relationship. [Mr G] stated he did not ask or discuss with his mother what the issues were for the applicant's visa application being refused.

35. I have considered that [Ms E] stated it would break her heart if the applicant did not remain with her family, and that he was a role model for her. I have considered that [Mr G] stated that the relationship between the applicant and his mother was healthy, they had their 'moments', and they made each other laugh.
36. I have considered their evidence that they both reside in their mother's home without being required to pay any financial contribution except to pay for the internet costs, and therefore I accept that [Ms E] and [Mr G] are financially supported by the sponsor. I have considered that [Ms E] and [Mr G] stated they were aware that their mother had financial difficulties, and [Ms E] stated she was aware that the applicant and her mother had financial difficulties, but had not enquired as to the nature of the financial problems that the applicant or their mother had. I have considered that [Ms E] and [Mr G] state they live in the house with the applicant and their mother, and stated they had no knowledge of the financial difficulties of the household, and had made no attempt to assist with the financial problems of the applicant and their mother. I accept that [Ms E] and [Mr G] had not involved themselves in the financial problems of the applicant or the sponsor. Although I accept the witnesses were aware the applicant and sponsor had financial difficulties, as they had such limited knowledge and stated they did not wish to find out about the financial difficulties of the applicant and the sponsor, I give less weight to their evidence of the financial aspects of the relationship.
37. I have considered the evidence of [Ms E] and [Mr G] about the genuineness of the relationship between the applicant and their mother. Their evidence is they have little knowledge of the details of the issues in the relationship, and have not discussed the problems in the relationship, or why it was refused. I have considered that the witnesses are adult children of the sponsor, who state they reside in the same premises as the applicant and sponsor, and who both state they have a close relationship with the applicant, and who both also state they did not know the details of the relationship, and did not involve themselves in the reasons given by the delegate for the refusal. I would expect that members of the household would involve themselves in discussion around the reasons for the refusal if a relationship is genuine. I would expect that members of the household would have detailed knowledge of some issues facing a relationship between their mother and her partner if they reside with the couple and the relationship is genuine. I accept that this is my expectation, and not all households are the same. The lack of detailed evidence from the sponsor's adult children, and their evidence that they did not engage in the realities and issues facing the relationship between applicant and the sponsor, is cause for the tribunal to consider their evidence with caution about the genuineness of the relationship between the applicant and sponsor.
38. I accept the evidence of the sponsor's two children that gave evidence at the hearing, is that they reside at the same address as the applicant and sponsor. I accept that [Ms E] and [Mr G] are members of the same household. Their evidence was also that the applicant and their mother reside together as a couple, and the relationship is a genuine one. While I have some reservations about their evidence, because they did not have any knowledge of the relationship beyond a superficial level, I give serious consideration to their statements that the applicant not only resides at the same address as their mother and themselves, but that he is in a spousal relationship with their mother.

39. The applicant and sponsor gave evidence about their lives, including their employment, their pets, their interests and their lifestyle. The tribunal recognises that the applicant and sponsor gave consistent evidence about many aspects of the household including the names of the members of the household and who shares rooms in the house, the names and ages of the sponsor's children, and the names of the pets in the house. The applicant and sponsor gave consistent evidence that the sponsor's children and her friend [Ms H] do not pay rent or board, about when the sponsor started work, that the sponsor manages all the bills, that both the applicant and sponsor have individual accounts into which their salaries are paid, and that the sponsor does the substantial amount of household cleaning. The consistent evidence included the times and place they usually walked the dogs, that the sponsor had not declared to Centrelink that she had partner with an income until 2017, that they have a joint bank account but do not use it, the two first names of the persons for whom the sponsor [does work for] being [Mr I] and [Mr J], that the sponsor's oldest child was previously known as [Mr K] and is now [Ms D], the sponsor's ongoing medical complaints and their future travel plans.
40. The consistent evidence before the tribunal included evidence of the circumstances of the relationship. This evidence included many of the matters listed in r.1.15A(3) under the headings of financial aspects of the relationship, and their household, and the social aspects of their relationship, and the parties' commitment to each other.
41. The evidence of the sponsor included that she received \$[amount] for the [puppies] that she bred. The sponsor stated she had a debt to Centrelink of \$10,000. She did not tell Centrelink when she sold the puppies (nine in one litter, ten in another) of her additional income. The sponsor stated it was her fault that she did not disclose to Centrelink the income she earned from breeding the [puppies].
42. The evidence is that the dog [Pet 1] is from one of the litters, and the other puppies were sold. The dog [Pet 1]'s age was an issue in the evidence at the hearing on 16 December 2019; the oldest estimate of her age in the response to the s.359A invitation was 2.5 years, (discussed later in this decision record). The litter of puppies was therefore born and sold after 17 February 2017. The sponsor had provided a statutory declaration to the Department dated 17 February 2017 in which she acknowledged her mistake in not declaring her relationship status to Centrelink, and asked for the opportunity to prove she would do the right thing. Subsequently in later 2017, the sponsor sold a number of puppies (from the litter in which [Pet 1] was born), for \$[amount] each without disclosing the extra income to Centrelink. This indicates that the sponsor continued to give information to government authorities as suited her own benefit. The tribunal considers it should give the sponsor's statutory declaration of 17 February 2017 little weight as evidence of her intention to provide the correct information to Centrelink or to any government authority or as evidence that she had changed her approach and would do the "right thing" and provide the correct information to government authorities when it goes against her own interest to do so.
43. When I asked for more detail of the information provided by the applicant about the relationship with the sponsor, there were inconsistencies in the evidence between the applicant and the sponsor. The inconsistencies were put to the applicant pursuant to s.359A after the hearing. The information was not put to the applicant in the hearing due to the length of the hearing and the number or complexities of inconsistencies in the evidence. I considered it was fairer to the applicant and easier to comprehend if it was set out in writing, and a period of time given to comment or respond. I have set out the s.359A letter and the relevant information in the decision record.

44. S.359AA invitation to comment

45. After the hearing the tribunal sent the s.359A invitation letter to the applicant dated 20 December 2019 inviting him to comment on information that arose out of inconsistent evidence given in the hearing. The particulars of the information were set out in the letter as follows:-
46. *In the hearing you stated you work 3 to 4 days per week depending on your employer's requirements as you are on call. Your sponsor stated you work 4 to 5 days per week on a casual basis. In the hearing you stated you and your sponsor have weekends free, and you both spend the weekends together. You stated the sponsor also works on an on-call basis. The sponsor stated she has been employed since April 2018 as a [Occupation 1]. She stated she has a permanent shift and works Monday, Wednesday, Thursday and Saturday each week.*
47. *This is relevant as if the tribunal relies on the evidence of the sponsor that she had a permanent shift and work each weekend on Saturday, the tribunal would not accept your evidence that you spend the weekends with your sponsor. Further if the tribunal accepts that there was inconsistent evidence from you and your sponsor as to the amount of days you both work, the basis of your sponsor's work (permanent or on-call), the Tribunal may not be satisfied that the evidence before it is reliable, or it may not be satisfied that you and the sponsor are in a genuine and continuing relationship, or live together and not separately and apart, on a permanent basis.*
48. *You provided seven photos of dogs and cats to the tribunal, described as "photos of the couple's pets", as evidence in support of the relationship. In a joint statement provided to the tribunal, you and the sponsor state you share a number of pets in the home, and everyone shares in the responsibility for the dogs. The tribunal asked you in the sponsor and the witnesses about the household pets.*
49. *You gave evidence that a previous cat '[Pet 2]' was found dead in the backyard but you stated this cat was not killed by the household dogs as they are all friendly. The sponsor gave evidence in the hearing that the cat [Pet 2], got out the bathroom window, and was beaten and killed by the household dogs.*
50. *You and the sponsor stated you have three [dogs] named [Pet 3], [Pet 4] and [Pet 1]. [Pet 1] is from [Pet 4]'s litter of puppies. You previously had two [dogs] named [Pet 5] and [Pet 6] who are now deceased. You stated [Pet 5] and [Pet 6] are the parents of the current three dogs. The sponsor stated [Pet 4] was given to the household. You stated [Pet 5] was quite old when he died, the sponsor stated he was poisoned when he was three or four years old. You stated [Pet 1] is now 1 ½ or two years old and the sponsor stated [Pet 1] is at least two years old.*
51. *You stated that [Pet 4] had a litter of 13 puppies (which you watch being born), and five died. The sponsor stated [Pet 4] had nine puppies. You stated [Pet 1] had one litter of nine puppies, and the sponsor stated [Pet 1] had 10 puppies and two died. You stated the puppies were sold for \$[amount], and the sponsor stated they were sold for \$[different amount]. You stated you kept [Pet 1] because she was so friendly, the sponsor stated you kept [Pet 1] because her sale fell through.*
52. *The relevance of the inconsistent information in relation to how the cat [Pet 2] died, how many puppies the dogs had in a litter and how many puppies died, why you kept [Pet 1], how old [Pet 5] was when he died, how [Pet 4] came to the household, how much the puppies sold for, and how old [Pet 1] is, is that this is detailed information about a part of your household that you submitted was evidence of your relationship.*

53. *If the tribunal relies on the inconsistent evidence of in relation to the lives and dealings with the household pets over the past years it may find that this indicates that you are not in a genuine and continuing relationship with the sponsor, and that you do not live with the sponsor, but live separately and apart, on a permanent basis.*
54. *You stated in the hearing the dogs belong to all the members of the family. The sponsor and the sponsor's son stated that [Mr G] had an affinity with a particular dog, [Pet 4]. You stated that [Ms H] feeds the dogs, and the sponsor stated that either she or [Ms H] feeds the dogs.*
55. *The relevance of the inconsistent information about whether a stepchild has a bond with one of the dogs, and who feeds the dogs as it indicates whether you are part of the household and family. If the tribunal relies on the inconsistent information, it may find it indicates that you are not in a genuine and continuing relationship, and it may find it indicates that you do not live with the sponsor, and live separately and apart, on a permanent basis.*
56. *If the tribunal is not satisfied that you are in a genuine and continuing relationship, or is not satisfied that you and the sponsor lived together, and not separately and apart, on a permanent basis this would be a reason, or part of the reason for affirming the decision under review.*
57. The applicant responded in a written submission dated 20 January 2020, and attached a signed joint statement from the applicant and sponsor, and a copy of the sponsor's work schedule. I have considered the submission, and I accept that some of the particulars of the inconsistent evidence can be interpreted as either consistent or co-existing, or the result of differing memories.
58. However, there are some particulars of the inconsistent evidence that I find troubling after considering the received responses and comments. In the hearing the applicant stated they spent weekends together. He stated the sponsor worked 30 – 40 hours a fortnight. The sponsor stated she works a permanent shift, Monday, Wednesday, Thursday and Saturday. Both the applicant and sponsor gave evidence that the sponsor has two [clients], and their names were [Mr I] and [Mr J]. In the responses the applicant's representative submitted and in the parties joint statement they stated the sponsor's Saturday shift is 2.25 hours, and they spend all of Saturday except 1.45 to 4pm and all of Sunday together.
59. I have considered that in his evidence in the hearing the applicant had not stated that the sponsor worked on Saturday afternoons. I find the inconsistency between the applicant's oral evidence and the written response notable. I consider the Saturday afternoon a sizable part of the Saturday, and it is a different concept to state you spend all weekend with a person, and the person works each Saturday afternoon. I find that a shift of 2.25 hours (plus travel) is a significant and not immaterial part of the Saturday and of the weekend. I do not accept the applicant would forget the sponsor works each Saturday if they spend the time together as claimed.
60. The applicant attached the sponsor's shift for her roster to [do work] for [Mr I] commencing 13 January 2020. This roster schedules 3.5 hours on Monday, 3.5 and 2.25 on Wednesday, 3.5 on Thursday and 2.25 on the alternate Saturday. This is a total of 15 hours for one week, and 12.45 hours for the second alternate week. There is no roster provided for the second client [Mr J]. The sponsor never stated in her evidence that she worked every second Saturday. She stated she works a permanent shift of four days, Monday, Wednesday, Thursday and Saturday.
61. I consider that the response did not provide both of the sponsor's rosters. I find the applicant provided documents with the response which is incomplete, and intended to mislead the tribunal. It did not contain the roster for [Mr J], and the roster for the sponsor's other

Saturday. I am concerned that the roster provided did not equate to the applicant's estimation the hours the sponsor worked per fortnight (30 – 40). I am concerned that in his evidence the applicant did not state that they spent weekends together except for when the sponsor worked every Saturday afternoon.

62. By letter dated 5 March 2020, I invited the applicant to provide the sponsor's other roster for her other client, [Mr J], for the same fortnightly period commencing 13 January 2020.
63. I consider that the applicant provided unreliable or misleading information to the tribunal to support the evidence he gave at the hearing.
64. The applicant provided a response on 12 March 2020, which included the roster for her other client [Mr J], for the same fortnight commencing 13 January 2020. The client's name could not be viewed on the roster, but the sponsor's hours could be ascertained:- every Monday and Thursday from 3.30pm to 8pm, and Saturday 25 January 2020 for the same hours, but also with the word vacant above her name. The sponsor provided an attached statement explaining that her hours on the Saturday with her other client [Mr J] had just been dropped as a friend was going to be with him, and she had been offered every second Saturday with [Mr J] as an emergency.
65. In her responses to the s.359A invitation the sponsor did not provide this information, which if correct, she must have known at the time. There is no explanation as to why this second roster was not provided to the tribunal with the responses about the sponsor's Saturday commitments. The second roster for the client [Mr J] clearly has Saturday hours rostered for the sponsor (whether they are accepted as emergency hours or not), and were relevant to the s.359A invitation and to the responses.
66. The sponsor has not provided any confirmation from her employer of her changed hours on Saturdays. The sponsor now states that she works on average one Saturday per month from 3.30 to 8.00pm for the client [Mr J].
67. I have considered the possibility that the sponsor is not providing the correct information and the word 'vacant' on the roster is not equivalent to emergency. I have concerns that the evidence of the sponsor's statement of her commitment on the client [Mr J]'s roster is reliable.
68. I cannot ignore a claim as simple as the applicant's evidence that he and the sponsor spent all weekend together. This could not be true at the same time as the sponsor's evidence in December 2019 that she worked a permanent shift, four days per week including Saturdays. At the time of her oral evidence the sponsor did not state she spent most of Saturdays with the applicant; she stated she had a permanent shift working four days per week including Saturdays. This evidence from the applicant and sponsor is about a long term relationship.
69. In support of the applicant's claim that he spends all weekend with the sponsor, the applicant provided the tribunal with half of the sponsor's roster, indicating it was her complete work roster. The applicant submitted as the sponsor only works 2.25 hours on a Saturday that they really spend all weekend together. Subsequently when requested to provide the second roster, which records a 4.5 hour commitment on a Saturday, the tribunal is advised it is an emergency arrangement which only just commenced on that week of the provided roster.
70. I find I cannot accept the applicant's submissions or the sponsor's statements as credible or reliable. I cannot rely on it. I do not accept that the sponsor only worked 2.25 hours each Saturday per week until recently. I do not accept that the sponsor has recently commenced weekend work for her other client. I do not accept that the applicant meant, when he stated he spent all weekend with the sponsor, that this excluded her work hours on Saturday

afternoon because they were short. I find that if your partner or spouse of many years has worked every Saturday for a long time on a permanent roster, it would be part of your evidence about time you spent together on the weekend. I do not accept as reliable or credible the oral or written evidence the applicant and sponsor have provided about the sponsor's work schedule, or spending time together.

71. I find that the applicant provided the tribunal with only one of the sponsor's rosters, in an attempt to mislead the tribunal in relation to evidence about the hours the sponsor worked on weekends. I find that the sponsor had not provided the correct information to the tribunal at the time of the responses. The evidence provided by the applicant and the sponsor is in the view of the tribunal unreliable, which continues a pattern of incorrect information they have provided to the Department connected with this visa application.
72. Further, I consider that an applicant in genuine relationship, if one of whom who has worked every Saturday afternoon on a permanent shift, would not claim to spend all weekend together with his spouse. I find this evidence of the applicant that he spends all weekend with the sponsor is not credible. The documents provided to the tribunal attached to the responses did not represent the sponsor's complete roster as part of her permanent shift, and I find that the explanation in relation to the second roster is credible or reliable.
73. The applicant and sponsor gave different evidence of the number of days the applicant worked. The applicant stated he worked three or four days. The sponsor stated the applicant worked four or five days. I accept the applicant's work days can fluctuate and he is employed as a casual. In the responses it is stated that the applicant had been working more days in the weeks before the hearing. I have balanced this assessment of the evidence with the consideration that I would expect that as the sponsor works for so many days each week, that the if the number of days of work the applicant gets increased, this would be a factor noticed by the parties. Further as the parties claim they experience some financial pressure, that they would both be aware if the applicant obtained more work, and therefore more income, for a period of weeks, if their financial arrangements are combined as they claim.
74. The parties provided responses in relation to the various inconsistencies that worried the tribunal about the evidence in relation to the pets of the household. The applicant introduced evidence of the pets as evidence of the genuineness of their relationship, claiming that they share a number of pets together in their home. This was the reason the tribunal asked questions in relation to the pets, to assess the evidence of the circumstances of, and genuineness of, the relationship.
75. I am not satisfied that if the parties are in a genuine relationship, and pets are an important part of the relationship, that the facts of how one of the pets came into the household ([Pet 4]) or how one of the pets died ([Pet 2]) would be an unresolved or undiscussed fact between the parties. I have considered that the applicant gave evidence that [Pet 4] was bred by the parties from their previous dogs, but the evidence of the sponsor, and the responses clarify that [Pet 4] was given to them. I accept the information in the responses that [Pet 4] was given to the household. The applicant claims they share pets together as part of their household, (as per the joint signed statement dated 7 December 2019), and the evidence that the applicant did not know that [Pet 4] was given to them indicates that the applicant and sponsor were not together as a couple in the household when the dog [Pet 4] was given to the sponsor.
76. I have considered the evidence that the cat [Pet 2] was found dead in the back yard, and the applicant stated that he was sure one of their dogs did not kill the cat, as they are friendly, but the sponsor stated that the cat got out the bathroom window and was bitten and killed by their dogs. The explanation provided in the response was that their evidence was different

because they do not know how the cat died as they were not there when it happened, and they have different views of what happened. The evidence in the hearing from the applicant and sponsor was their accounts of what happened to the cat. Neither the applicant or sponsor, in their oral evidence indicated they had discussed what happened to the cat, and had formed different views of the cat's death. In the oral evidence, the applicant and sponsor did not state that they had discussed the death of the cat, and did not agree on whether or not their own dogs had attacked the cat. The evidence in the hearing was that the applicant and sponsor gave different accounts of how the cat was killed. This indicates that the parties had not discussed the death of the cat, and had individually formed their own views on the matter.

77.

SPOUSE/DEFACTO (cl.801.221(2))

Whether the parties are in a spouse or de facto relationship

78. Relevantly to this matter, cl.801.221(2)(c) requires that at the time of this decision, the applicant is the spouse of the 'sponsoring partner', who must be an Australian citizen or Australian permanent resident or an eligible New Zealand citizen who was specified in the related Subclass 820 visa application as the spouse or de facto partner of the applicant. In the present case the applicant claims to be the spouse of the sponsor who is an Australian citizen and was identified in the Subclass 820 visa application. On the evidence before it, the Tribunal is satisfied that the sponsor is the 'sponsoring partner' of the applicant.
79. 'Spouse' is defined in s.5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as a married couple to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s.5F(2)(a) - (d). In forming an opinion about these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the visa applicant's and sponsor's household and their commitment to each other as set out in r.1.15A(3), which is extracted in the attachment to this decision. Each of the specific matters contained in r.1.15A(3) are effectively questions which must be answered: *He v MIBP [2017] FCAFC 206*.

Are the parties validly married?

80. If the parties are validly married, they may meet the requirements of a married relationship, but not a de facto relationship. The parties are validly married, but they married after the time of application. Based on the registered marriage certificate, the parties married [in] March 2014. On the evidence, the parties were married to each other under a marriage that is valid for the purposes of the Act as required by s.5F(2)(a).
81. The tribunal has been provided with an application form dated 5 September 2014, and a Department decision record that records the application was lodged on 10 May 2013. The tribunal accepts the Department was satisfied the parties were in a genuine relationship, and granted the applicant a subclass 820 in September 2014.

82.

83.

Are the other requirements for a spouse relationship met?

84. I have assessed the credibility of the applicant and sponsor in making my findings. I find the sponsor will provide incorrect evidence to achieve an outcome suitable to her purpose. The sponsor has provided evidence of the unreliability of her evidence in statutory declarations and in oral evidence to the tribunal. The sponsor has provided incorrect evidence to the Department in the sponsorship forms, and I find that her answers that she had only sponsored one previous partner for a visa was not unintentional, but was an intentional deception. The applicant provided incorrect information to Centrelink by not declaring her marriage to Centrelink and continuing to claim newstart as a single person. The sponsor also stated that she sold 19 puppies (possibly only 18) valued at \$[amount] each without informing Centrelink. I find that the sponsor has provided evidence that she sold nine or ten puppies in 2017 in the amount of \$[amount] each, and did not disclose this to Centrelink after providing a statutory declaration that she would do the right thing. I find the sponsor's statutory declaration that she has made a mistake and will change her ways is unreliable. I find the sponsor has a history of providing unreliable and self serving evidence.
85. The applicant has provided an application form that provided incorrect information about the sponsor's previous sponsorships. When the applicant provided the form 1023 about the incorrect information of the sponsor's previous sponsorships and previous relationships he did not include the actual information about the sponsor's previous sponsorships that had not been provided. In the responses to the s.359A invitation to comment the applicant provided the sponsor's roster for her client [Mr I], but not her roster for her client [Mr J]. I find the applicant has intentionally omitted to provide information, and has attempted to mislead the tribunal in relation to information it is considering.
86. I have noted that several items of evidence provided to the Department and the tribunal were statements or statutory declarations or forms signed by the applicant or sponsor. I treat the contents of the statements and statutory declarations and forms provided by the applicant and sponsor with caution, given their history of providing incorrect information.
87. I find the applicant and sponsor provided the tribunal and the Department with a breadth of information. I find the applicant and sponsor provided the tribunal with some consistent evidence across all aspects of the circumstances of their relationship that the tribunal is required to consider. I have very carefully considered all the evidence presented to the tribunal.
88. I have reason to treat the evidence of the applicant and sponsor with caution. I find the applicant continued to provide the tribunal with misleading information, after the hearing, including providing only one of the sponsor's work rosters. I find that the applicant and sponsor have provided unreliable evidence in relation to their relationship.
89. I have carefully assessed and balanced the evidence before me, as there is written evidence provided by friends, relatives and family members. There is documentary evidence collated over a period of time. Much of this evidence establishes that the applicant resides at the same address as the sponsor. The issue is whether, despite the unreliable evidence of the applicant and sponsor, whether there is sufficient evidence of enough weight to satisfy the tribunal that the parties are in a spousal relationship within the meaning of s.5F(2).
- 90.
- 91.
- 92.

93. Circumstances of the Relationship

94. *Financial aspects of the relationship:-* Based on the evidence before me the parties do not jointly own real estate or jointly have liabilities. The parties gave evidence that they both had debts they were trying to pay off, and they gave consistent evidence in relation to their understanding of each other's financial arrangements. There is no evidence that one party has a legal obligation in respect of the other. I accept the applicant financially supports his mother and family in India. I accept both parties are currently employed, have individual bank accounts, and the sponsor manages the financial expense and bills of the household. I accept the parties have a joint bank account but do not use it. I accept the parties have arranged joint car insurance, and payment plans for debts. The evidence of the parties that they financially assist each other indicates pooling of financial resources (although there is no evidence of major financial commitments) and sharing of daily expenses.
95. The financial aspects of the relationship indicate the parties are in a genuine and continuing relationship.
96. *Nature of the household:-* Based on the evidence before me, the parties do not have the responsibility for care and support of young children, and do not, or cannot, plan for children in the future. However, the consistent evidence is that the sponsor's two adult children who reside in the home pay no board or expenses except for the internet costs, so I accept that the sponsor's two children receive financial support from the applicant and sponsor through their accommodation which is paid by the parties together. The children of the sponsor gave evidence of other support they received from the applicant. [Ms E] and [Mr G] both stated they had a good relationship with the applicant and [Ms E] stated she considered him a role model. The consistent evidence before the tribunal is that the applicant and sponsor reside in the same home with [Ms E] and [Mr G], but the children lived independent lives in the applicant and sponsor.
97. The parties provided written evidence of sharing domestic responsibilities and responsibility for housework, and in the hearing clarified that the sponsor undertook most of the indoor domestic tasks. I accept the sponsor does most of the cleaning in the house. This evidence of the nature of the household can be consistent with the applicant residing at the same address as the sponsor, and there is extensive correspondence and documentary evidence to support this. I am satisfied the applicant resides at the address with the sponsor.
98. There is considerable evidence before me that the parties reside in a three bedroom house, with three other persons, and the applicant and sponsor share one bedroom. It is this aspect of the parties living arrangements that I am troubled by. To find the parties do not reside together as a couple requires the decision maker to reject the evidence of the four witnesses at the hearing. I have noted that the sponsor's two children who gave evidence at the hearing emphasised that they did not get involved or have any knowledge of any issues of depth in relation to the claimed relationship between the parties.
99. The two children, while claiming the relationship between the applicant and their mother was genuine and that they lived with them, distanced themselves from any knowledge of the reason why the application for the visa was refused, any of the financial difficulties the applicant and their mother faced, or any of the problems in the relationship. I have noted the evidence of these two witnesses who live at the same address as the applicant and the sponsor.
100. Both [Ms E] and [Mr G] referred to the relationship between the applicant and the sponsor as a good relationship; [Mr G] stated it was healthy and they laughed together, and [Ms E] stated she wanted the applicant to remain as part of her family and he was a father figure and role model. The two witnesses stated they had always lived with their mother, and were

aware of her relationship with the applicant. Consequently the tribunal gives weight to the written and oral evidence of these witnesses in its analysis of the evidence of whether the applicant and sponsor live together as spouses as claimed.

101. I have considered the evidence, discussed above, that the applicant claimed that he and the sponsor spent the weekends together, the sponsor stated she had a permanent shift four days a week including Saturdays, and after the hearing in response to a s.359A invitation, the applicant stated the sponsor only worked 2.5 hours on Saturday and attempted to mislead the tribunal by only providing half her work roster. I do not accept the evidence that the parties spend the weekend together, or that the sponsor has only been working 2.5 hours on Saturdays as part of her permanent shift until recently. The fact the applicant gave evidence that he spent all weekends with the sponsor when she stated she worked Saturdays, indicates the parties lead separate lives and are not in a de facto or spousal relationship. I have considered that a boarder in the sponsor's home would not necessarily know which days she works. I would expect her partner or spouse of some years to be aware of her permanent shift week work days. I would expect the applicant to be aware the sponsor works every Saturday, as it had been part of her permanent four day work week for some time.
102. The applicant claimed he and the sponsor had pets as part of their relationship. The tribunal probed the applicant and sponsor about this aspect of their relationship, and the evidence provided by the applicant and sponsor disclosed inconsistencies which indicate that the parties do not have the pets as a partnership. The fact that the applicant did not know that [Pet 4] was given to the sponsor rather than bred by the sponsor as he had stated in his evidence indicates he may be a boarder at the sponsor's home, rather than her partner or spouse.
103. Overall, after analysing the evidence of the witnesses, balanced with my assessment of the reliability of the evidence of the applicant and sponsor, and the overall reliability of the evidence before me, I find I have serious doubts that the evidence supports the finding that the applicant lives with the sponsor in the living arrangements as claimed.
104. However, the evidence of the nature of the household, inclusive of the responsibility for the care and support of children and the sharing of the responsibility for housework, does indicate the parties are in a genuine relationship. On balance I find the evidence of the nature of the household indicates the parties are in a genuine relationship.
105. *Social aspects of the relationship:-* I accept the sponsor's three children and two friends have provided written evidence, and there is oral evidence that the applicant and sponsor represent themselves as being married, and that the opinion of the five persons who provided the statements (and two of these gave oral evidence to the tribunal) that the relationship is genuine.
106. The evidence that the relationship is genuine, is evidence that is before the tribunal and I have carefully considered. Taken in isolation, and just assessing the statements of the witnesses of the relationship, the tribunal has noted that the sponsor's children, a cousin and a friend have made statements that the relationship is genuine, provided to the tribunal, in addition to the evidence provided to the Department. I note that [Mr G] gave evidence that the relationship between the applicant and his mother was a healthy relationship, and in a written statement stated that the applicant has been a great husband to his mother, and has stuck by his mother and him for six years through good times and tough times and the relationship is genuine. I have considered that [Ms E] in a statement dated December 2019 declared that the applicant was a great husband to her mother, a great role model to herself and her siblings and the bond is unbreakable between herself and her stepfather and she considered him a father figure who has taught her much in life. She stated that her mother is

happy with the applicant and she hopes he continues to be part of the family. I have considered that a friend of the family made a statement that the applicant and sponsor have a good bond and connection and they are both been there for each other and have had a amazing and happy six years since they were married. She stated that the applicant is therefore the sponsor and family through good times and bad.

107. [Ms D] provided a statutory declaration to the Department dated 2015 in which she also states that the applicant had been a role model for her, and that he had been there for the family through thick and thin, and provided the family with protection and made them all feel loved. [Ms D] declared that she lived with the applicant and her mother, and that they are a genuine couple, and that her mother was very happy when they married. I note that a cousin of the sponsor who stayed in the home provided a written reference that the applicant is happily married to the sponsor.
108. I have considered that the applicant's sister provided a statement dated December 2019 that she and her mother are supportive of the relationship and that the relationship is genuine. I have considered the oral evidence of the two adult children of the sponsor, who stated they had no knowledge of the reasons why the application was refused, of the parties' financial issues, or of problems in the relationship. I accept that they stated the applicant and sponsor laughed together, and had their 'moments'.
109. The tribunal has also noted the photos, travel documents and the statements from the parties.
110. I am satisfied based on the evidence that the parties represent themselves to other people as being married to each other, and that in the opinion of the persons' friends and family, the nature of their relationship is genuine.
111. The tribunal accepts the parties walk the dogs together, to the park across the road, and have travelled together previously and hope to do so again. The applicant spends a lot of time at the gym, which is an interest not shared by the sponsor. I accept there is evidence of the parties' planning and undertaking of social activities.
112. Overall, the evidence of the social aspects of the relationship indicates that the applicant and sponsor are in a genuine and continuing relationship.
113. *Nature of the persons' commitment to each other:-* The parties claim to have been together since June 2012, and to have been living together since June 2012, and have been married since March 2014. I accept the parties have resided at the same address, and that the parties are married.
114. However I have doubts as to whether the evidence before me establishes that the parties have been in a de facto relationship or a spousal relationship for the period claimed.
115. The evidence before me, and I accept, is that the parties have provided some emotional support to each other through serious issues including the sponsor's illness, the applicant's father's death, and including the applicant developing good relationships with the sponsor's three children. I accept the applicant and sponsor are good friends and have provided support and companionship to each other. The applicant and sponsor claim that the relationship is long term and they will continue to spend time together and look after each other.
116. The tribunal is not satisfied that the parties spend the time together as they claim. The tribunal has considered the evidence of the applicant that they spend the weekends together, whereas the evidence is that the sponsor works on Saturday. I consider that

usually a spouse would know, if he spends every weekend with his wife, whether she works every Saturday or not. I have assessed the evidence that suggests the applicant and/or sponsor were not aware of their work days, the applicant was not aware of the more intricate details of the pets including how they got [Pet 4], and that they had not discussed their difference of opinion about the death of [Pet 2]. This all suggests to me that although the applicant and sponsor reside at the same address they are not in a committed partner relationship; they are not sharing their lives together as they claim. I have assessed the sponsor's history of providing incorrect information. I have assessed the applicant's history of omitting to provide correct information. I have put weight on the applicant's and sponsor's history of providing incorrect information.

117. I have considered whether the evidence before me of the written and oral evidence of the sponsor's children and the two friends, overcomes the unreliability with which the evidence of the applicant and sponsor is tainted. I accept that there is a body of evidence that establishes that the applicant resides at the same address as the sponsor. The issue is whether the applicant is in a genuine relationship with the sponsor. I have considered whether the applicant lives with her in a shared bedroom as her de facto partner since 2012, or as her spouse since their marriage.
118. I have considered the overall evidence in this matter. I am cognisant of the importance of the evidence of the sponsor's two children who reside in the home. I am cognisant of the extent of written and documentary evidence that has been provided in support of the application, particularly by friends, relatives and members of the family who attest the relationship is genuine.
119. I have considered that much of the documentary evidence confirms the applicant resides at the same address as the sponsor. I have considered that much of the documentary evidence has been arranged or obtained by the applicant or sponsor.
120. I find it is highly relevant that the applicant has provided the tribunal with misleading information in relation to the application and the evidence of his relationship. As stated earlier in this decision record, the applicant and the sponsor are persons who do not provide the correct information to government authorities. It is relevant to my assessment of the reliability of the evidence that in response to a s.359A invitation letter from the tribunal, the applicant provided only half of the sponsor's work roster and attempted to mislead the tribunal in relation to the sponsor's work roster. The tribunal finds the evidence of the applicant and the sponsor, and the information provided by the applicant to be unreliable. The question for the tribunal is whether this means they are not in a genuine relationship? I have carefully and over a protracted period considered the evidence in this review.
121. I have to consider the possibility that the witnesses who provided oral and/or written evidence were either mistaken or persuaded to provide the evidence that they did, and rendered unreliable. Alternatively their evidence is reliable. I balanced the witnesses' evidence with the evidence from the applicant the same review. I have considered the applicant gave evidence that was not reliable, or credible, and then tried to support this by trying to mislead the tribunal. However, I am unable to conclude that the authors of the written statutory declarations and the written statements are all providing false documents to the Department and the tribunal. I am unable to find that the sponsor's two children gave false evidence in the hearing.
122. I therefore accept the evidence of the witnesses that the applicant and sponsor are in a genuine relationship as claimed. I accept that the applicant is not just a boarder at the sponsor's home. I accept the relationship must be unusual, as the applicant, through his evidence has demonstrated a lack of knowledge of the sponsor's work and pets, which are a substantial part of her life. However, based on the evidence of witnesses, I accept at the time

of decision the parties have been married for six years and living together for over seven and a half years.

123. I accept the parties see the relationship as long term.
124. I find the evidence of the parties' commitment to each other indicates the relationship is genuine and continuing, and that the parties have a mutual commitment as a married couple to the exclusion of all others, and that the applicant and sponsor live together, and not separately and apart, on a permanent basis.
125. I do find that the applicant and sponsor have provided unreliable evidence and the applicant has attempted to mislead the tribunal. I find the applicant's conduct and treatment of the tribunal's process unsatisfactory.

126. Conclusion

127. I have considered the circumstances of the relationship within the requirements of r.1.15A(3) at the time of decision. I am satisfied that the applicant and sponsor are in a spousal relationship within the meaning of s.5F(2)(a) – (d) at the time of decision. I find the applicant and sponsor are validly married to each other, have a mutual commitment to a shared life to the exclusion of all others that they in a genuine and continuing relationship, and that they live together and not separately and apart on a permanent basis, at the time of decision.
128. Given these findings the Tribunal is satisfied that the requirements of s.5F(2) are met at the time of this decision. Therefore the applicant meets the requirements of cl.801.221(2)(c).
129. Given the above findings the appropriate course is to remit the application for the visa to the Minister to consider the remaining criteria for the grant of the visa.

130.

DECISION

131. The Tribunal remits the application for a Partner (Residence) (Class BS) visa for reconsideration, with the direction that the applicant meets the following criteria for a Subclass 801 (Partner) visa:-
- cl.801.221(2)(c) of Schedule 2 to the Regulations.

Margie Bourke
Member

ATTACHMENT - Extract from Migration Regulations 1994

1.15A Spouse

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
 - (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).
- (3) The matters for subregulation (2) are:
 - (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day to day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).